

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 2, 2017 appellant, then a 70-year-old business opportunity specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 12, 2017 she fell at work and fractured her left hip while in the performance of duty. She stopped work that day. On January 17, 2017 appellant underwent a left total hip replacement. On February 23, 2017 OWCP accepted the claim for displaced femoral neck fracture of the left hip. It paid appellant wage-loss compensation on the supplemental rolls commencing March 19, 2017 and on the periodic rolls commencing April 2, 2017. Appellant returned to part-time light-duty work on November 19, 2018.

In an August 20, 2019 e-mail, appellant's vocational rehabilitation counselor noted that appellant had elected to retire, effective August 3, 2019.

In a letter dated September 5, 2019, OWCP advised appellant that her period of entitlement to compensation was August 18 through September 14, 2019, that her weekly wage-loss compensation on the periodic rolls was \$844.25, that her monthly compensation was \$3,658.42, and that her payment every 28 days was \$3,377.00. It noted that she was receiving or may be entitled to receive benefits provided by OPM under her retirement system. OWCP informed appellant that she was not entitled to receive annuity benefits from OPM and benefits for wage-loss compensation from OWCP for the same period of time. It noted that she must elect which benefit to receive and provided her with an election form.

On September 12, 2019 OWCP received a notification of personnel action, Standard Form (SF) 50, indicating that appellant voluntarily retired effective August 3, 2019 and that she was under the Civil Service Retirement System (CSRS).

In a September 25, 2019 letter, OWCP again advised appellant that her weekly compensation amount on the periodic rolls for the period September 15 through October 12, 2019 was \$844.25. It further informed her that she must report any retirement income received from any federal agency, as federal employees who receive wage-loss compensation benefits under FECA are not permitted to concurrently receive benefits under certain other federal programs, including CSRS or the Federal Employees Retirement System (FERS).

On October 15, 2019 OWCP received an election of benefits form signed by appellant on October 7, 2019 in which she indicated that, effective August 3, 2019, she was electing to receive benefits from OPM in preference to any benefits she might be entitled to under FECA. Appellant noted that she had not yet been assigned a civil service active (CSA) number.

In a November 5, 2019 letter, OWCP requested that OPM reimburse it in the amount of \$7,937.70 for FECA benefits paid to appellant during the period August 3 through October 12, 2019.

On November 22, 2019 OWCP issued a preliminary overpayment determination that an overpayment of compensation was created in the amount of \$7,937.70 for the period August 3 through October 12, 2019 because appellant "retroactively elected dual benefit (annuity payments)" *via* OPM while in receipt of disability compensation under FECA for the same period. It found that she was without fault in the creation of the overpayment. OWCP provided appellant

an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20) requesting financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised that, within 30 days of the date of the letter, she could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In a completed overpayment action request form dated December 8, 2019 and received December 23, 2019, appellant requested that OWCP render a decision based on the written evidence and requested waiver of recovery of the overpayment. She noted that she had not yet received any retirement benefits. On an undated Form OWCP-20 received December 23, 2019, appellant provided her financial information. She noted that she had continued to receive payments from OWCP, but had not received a retirement annuity. Appellant provided her 2018 Federal tax return.

By decision dated January 9, 2020, OWCP finalized the November 22, 2019 preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount \$7,937.70 for the period August 3 through October 12, 2019. It found that she was without fault in the creation of the overpayment of compensation, but denied waiver of recovery of the overpayment as she had not provided sufficient financial documentation. OWCP required that appellant repay the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.² Section 8116 limits the right of an employee to receive compensation: While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.³

Section 10.421(a) of OWCP's implementing regulations provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁴ The beneficiary must elect the benefit that he or she wishes to receive.⁵ OWCP's procedures also explain that the employee must make an election between FECA benefits and OPM benefits. The employee has the right to elect the monetary benefit which is the more advantageous. This policy also applies to reemployed annuitants.⁶

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(a).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(a) (January 1997); *L.H.*, Docket No. 19-1485 (issued August 14, 2020); *R.S.*, Docket No. 11-0428 (issued September 27, 2011); *Harold Weisman*, Docket No. 93-1335 (issued March 30, 1994).

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant had received an overpayment of compensation in the amount of \$7,937.70 for period August 3 through October 12, 2019.

On October 7, 2019 appellant elected OPM retirement benefits, retroactive to August 3, 2019. OWCP, however, continued to pay her compensation on the periodic rolls through October 12, 2019. On November 5, 2019 it requested that OPM reimburse it in the amount of \$7,937.70 for FECA benefits paid during the period August 3 through October 12, 2019. On November 22, 2019 OWCP issued a preliminary overpayment determination that an overpayment of compensation was created in the amount of \$7,937.70 for the period August 3 through October 12, 2019 because appellant “retroactively elected dual benefit (annuity payments)” *via* OPM while in receipt of disability compensation under FECA for the same period. In a completed overpayment action request form dated December 8, 2019 and received December 23, 2019, appellant contended that she had not yet received any OPM retirement benefits. OWCP, however, finalized the November 22, 2019 preliminary overpayment determination by decision dated January 9, 2020.

While the record reflects that appellant received FECA benefits for the period August 3 through October 12, 2019, OWCP has not established that she also received OPM benefits for this period.⁷ The Board has previously held that the mere fact that a claimant received FECA benefits after the effective date of an OPM election will not establish receipt of a prohibited dual benefit.⁸ Therefore, the Board finds that OWCP has not met its burden of proof to establish that the overpayment occurred.⁹

CONCLUSION

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$7,937.70 for the period August 3 through October 12, 2019.¹⁰

⁷ *C.P.*, Docket No. 19-0732 (issued September 5, 2019); *M.C.*, Docket No. 18-0074 (issued August 1, 2019).

⁸ *C.P., id.*; *J.M.*, Docket No. 15-1604 (issued May 23, 2016) *B.H.*, Docket No. 13-1955 (issued January 29, 2014).

⁹ *See C.P., supra* note 7.

¹⁰ In light of the Board’s finding on Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 12, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board